

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Matter of

) MM DOCKET No. 94-29

Amendment of Section 73.202(b)

)

Table of Allotments

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FM Broadcast Stations

)

(Willows and Dunnigan, CA)

)

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To: John A. Karousos  
Acting Chief, Allocations Branch

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FEDERAL COMMUNICATIONS COMMISSION  
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REPLY COMMENTS OF PETITIONER

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June 21, 1994

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### Summary of Reply Comments

The supporting Comment filed by Birdsill [KCFM] presents a separate and independent public interest reason -- in addition to reasons advance by Petitioner -- why the proposed Rule Making should be adopted. The four opposing Comments -- each one filed by a potential radio competitor of Petitioner -- advance meritless arguments aimed at stifling competition and denying a first local broadcast service to a growing community. As the NPRM correctly found, Dunnigan is precisely the type of established, developing community that is deserving of a "first local broadcast service" allocation by the FCC. That public interest factor -- and other factors -- outweigh the interests of Willows, CA in maintaining a second local transmission facility, particularly when Willows receives service from more than nine (9) radio stations and where the FM facility at issue cannot otherwise be upgraded to B1 status. Finally, notwithstanding the anti-competitive, self-serving protestations of four existing Sacramento-market radio stations that PSN is attempting an "unlawful move-in" to "their" market, the proposed Rule Making is completely consistent with FCC precedent. Although these potential competitors of PSN seek to mislead the Commission into serving their narrow, anti-competitive purposes, the public interest and the residents of the Dunnigan community will be best served in this case by adoption of the proposed Rule Making.

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**To: John A. Karousos**  
**Acting Chief, Allocations Branch**

Pacific Spanish Network, Inc. ("PSN"), Petitioner's successor-in-interest <sup>1/</sup>, respectfully submits these Reply Comments in support of the proposed Rule Making, whereby Channel 288B1 would be substituted for Channel 288A at Willows, CA, and Channel 288B1 would be reallocated from Willows to Dunnigan, CA. <sup>2/</sup>

2/ Comments were filed on June 1, 1994, by PSN and on June 6, 1994, by Fuller-Jeffrey Broadcasting Corporation of the Sacramento Valley ("Fuller-Jeffrey"), KZSA Broadcasting, Inc. ("KZSA"), River Cities Radio, L.P. ("River Cities"), Michael Robert Bird-sill ("Birdsill"), and [jointly] by Genesis Broadcasting, Inc. and Tribune Broadcasting Co. ("Genesis/Tribune").

## Discussion

### **I. DUNNIGAN IS A "COMMUNITY" FOR ALLOTMENT PURPOSES**

1. Three of the six Comments filed in response to the NPRM questioned the Commission's initial finding that Dunnigan is a "community" for allotment purposes. See NPRM, DA 94-306, MM Docket No. 94-29, released April 15, 1994, at ¶ 4. The evidence overwhelmingly supports the Commission's determination that Dunnigan is a "community" for allotment purposes.

2. River Cities asserts (Comments at 2) that Dunnigan is merely "a wide spot in the road with a post office and general store" and that it has "two (maybe three) businesses" (id. at 10). In fact, the very Pacific Bell telephone book relied on by River Cities lists Dunnigan as a community and, in its Business White Pages, identifies at least 28 business establishments including stores, churches, motels, camping grounds, restaurants, gas stations, an adult residential care facility, a golf course etc. See Appendix A hereto. <sup>3/</sup> Contrary to other claims by opponents, Dunnigan does have civic organizations and emergency medical care. See Appendix N hereto. <sup>4/</sup>

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<sup>3/</sup> PSN respectfully submits that River Cities' representations to the Commission about the contents of the Pacific Bell phone listings for Dunnigan were less than candid.

<sup>4/</sup> KZSA falsely claims (at 7) that "Dunnigan lacks a focal point" but is merely two separate areas. In fact, Dunnigan was bisected twenty years ago by I-H 5. Most residential development has simply taken place in the Harwood Subdivision, on the west side of the Interstate. See Petition at Exhibit B, page ES-1.

3. Moreover, River Cities presented a "pictorial" view of Dunnigan that was grossly misleading. The four severely "cropped" photographs selected by River Cities (Comments at Exhibit C) falsely imply that there are only three buildings in Dunnigan. In fact, there are approximately 175 dwelling units <sup>5/</sup> and several dozen businesses/public buildings in Dunnigan, including the Dunnigan General Store, the Post Office, the Dunnigan Water District building, the Dunnigan Fire Department, Dunnigan Mini Mart, motels, restaurants, service stations, churches, a residential subdivision etc. See Appendix B (photographs of these). River Cities is thus plainly wrong when it boldly claims that Dunnigan has no shopping (Comments at ¶ 3) or churches (id. at ¶ 4) or local governmental services (id.). <sup>6/</sup> See Appendix N.

4. Furthermore, River Cities is also flatly wrong (Comments at note 3) in claiming that Dunnigan cannot be a "community" for FCC allotment purposes because it is not a census designated place. <sup>7/</sup> The FCC long has held that it will recognize any "geographically identifiable population grouping" as a "community" for allotment purposes. See FM Channel Policies/Procedures,

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<sup>5/</sup> See Exhibit B to the Petition, at II-2 (chart).

<sup>6/</sup> River Cities also falsely criticizes the Commission (Comments at note 6) for finding that Petitioner presented evidence from an elected county official who River Cities alleges is only an "assistant county planner." In fact, the Commission was correct and River Cities was wrong. Petitioner presented Statements supporting the proposed allotment to Dunnigan from both a county planner and an elected county official. See Exhibits A and D to the Petition for Rule Making (hereinafter "Petition").

<sup>7/</sup> KZSA concedes (Comments at 8) that Dunnigan's unincorporated status is not determinative of the "community" question.

90 FCC 2d 88, 101 (1982); see also FM Assignments, 5 FCC Rcd 934, 934-5 (1990) (Semora, NC, held to be a "community" even though it is not a CDP and has no local government). <sup>8/</sup> The FCC has also emphasized that "the standard to be applied in determining whether a specified locality is a 'licensable' community is not a stringent one." See Beacon Broadcasting, 2 FCC Rcd 3469, 3470 ¶ 9 (1987). The United States Geological Service of the federal Department of the Interior has recognized Dunnigan as a community in its "Dunnigan Quadrangle." <sup>9/</sup> Accord Appendices A, D and E.

5. Both River Cities (Comments at note 3) and Genesis/-Tribune (Joint Comments at 3) question whether the population of Dunnigan is "approximately 700," as stated by Petitioner, or only 495, as stated in the "Town of Dunnigan General Plan" (Petition at Exhibit B, II-2). There is no discrepancy. The latter figure is at least three years old (id.) and the "approximately 700" figure was given to Petitioner six months ago by a county planner (see Petition at Exhibit A). In any event, the population argument is largely irrelevant, inasmuch as the FCC recently has allocated an FM channel to another California "community" with as few as 419 residents <sup>10/</sup> and, just four years ago, allocated an

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<sup>8/</sup> See Petition at 3-4 (cases cited).

<sup>9/</sup> See Appendix C hereto.

<sup>10/</sup> See Pt. Arena, CA, DA-93-1389, released December 13, 1993.

FM station to a North Carolina "community" with a population of only 150. <sup>11/</sup>

6. KZSA criticizes the Commission (Comments at 7) for concluding that Dunnigan has "identifiable boundaries." River Cities, however, appears to concede (Comments at 2, note 4) that Dunnigan has "identifiable boundaries." Of course, not only did Petitioner cite to the boundaries described in the "Town of Dunnigan General Plan" but also notes that the Yolo County Zoning Map No. 17 shows the clearly delineated boundaries for the community of Dunnigan. See Appendix D hereto.

7. In short, there is overwhelming probative evidence that Dunnigan is a recognized "community" <sup>12/</sup> and most certainly is an "identifiable population grouping" as that term has been defined by the FCC. <sup>13/</sup>

## **II. DUNNIGAN'S NEED FOR FIRST LOCAL SERVICE IS GREATER THAN WILLOW'S NEED TO MAINTAIN SECOND LOCAL SERVICE**

8. Three of the six Comments argue that Dunnigan's need for a first local transmission service is not as great as Willow's

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<sup>11/</sup> See FM Assignments, supra, 5 FCC Rcd at 934-5.

<sup>12/</sup> For example, the 1990 Rand McNally map of "Yolo, Glenn and Colusa Counties" not only shows Dunnigan as a town on Interstate 5 but has a separate town "inset" for Dunnigan. See Appendix E. Indeed, "Dunnigan" is a named town on the Interstate 5 highway signs. See Appendix F (photos showing "Dunnigan" as town on Interstate Highway 5).

<sup>13/</sup> See Statement of County Supervisor, attached as Appendix G ("long been an established community").



need to maintain a second local service. This argument is based on a series of false factual premises.

9. First, it is clear that the provision of a first local transmission facility is one of the Commission's highest allotment priorities. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). It is indisputable that Willows has two (2) local transmission facilities and Dunnigan currently has none.

10. Genesis/Tribune assert (Comments at 5-6), however, that the removal of one of Willow's only two local radio stations -- its only FM station -- is contrary to the public interest because it "does not appear" that any other FM station is available to Willows. They are wrong. While the updated FM engineering database reveals that the recent filing of an FM application for Point Arena, CA, voids the use of Channel 272A for Willows, it is clear that Channel 292A can be allocated to Willows. <sup>14/</sup>

11. Moreover, it is clear that, compared to Petitioner's currently licensed Channel 288A facility, available Channel 292A would be a superior FM facility for Willows. As explained by Petitioner's engineering consultant, Channel 292A would be a superior allotment to Willows because the population and land area within the 60 dBu contour of a Channel 292A facility for

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<sup>14/</sup> As explained in the Engineering Statement attached hereto as Appendix H, approximately 88 percent of the city of Willows falls within the 70 dBu contour produced by the fully spaced Channel 292A facility. Hence, an allotment of Channel 292A can be made to Willows in substantial compliance with Section 73.315(a) of the Rules.

Willows would exceed those within the licensed KQSC (FM) 60 dBu contour. <sup>15/</sup>

12. Genesis/Tribune also speculate (Comments at 5) that the continuing viability of existing station KIQS (AM) at Willows is questionable. The owner of that radio station directly refutes that assertion. <sup>16/</sup>

13. KZSA also asserts (Comments at 2) that neither Willows nor Glenn County would likely receive any service from the upgraded FM facility at Dunnigan. That is neither a sufficient reason to deny this proposal nor necessarily even factually correct. A study by Petitioner's engineering consultant demonstrates that, should the transmitter site for the Dunnigan station ultimately be located north of the site hypothetically chosen for purposes of the Petition, Willows and southeastern Glenn County would be within the Dunnigan station's 54 dBu protected contour. <sup>17/</sup>

14. Finally, even KZSA concedes (Comments at 4) that "removal of service" from one community and its reallocation to another community is warranted if sufficient public interest factors are present. In this case, there are substantial public interest factors in favor of such a reallocation. First, Dunnigan is entitled to a "first local service" preference over Willows. Dunnigan is not only a "community," it is deserving of a

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<sup>15/</sup> See Engineering Statement, attached as Appendix H.

<sup>16/</sup> See Appendix I.

<sup>17/</sup> See Appendix J.

first local service preference. Dunnigan is projected to be one of the highest growth towns in the entire Yolo County in the next 20 years. <sup>18/</sup> One development project will bring to Dunnigan both an industrial park on 62 acres and also a commercial center on 20 acres that will provide 150-250 jobs on completion during the next four years. <sup>19/</sup> That same company is working with two agri-businesses to locate near Dunnigan and to employ up to 200 persons. <sup>20/</sup> In addition, another firm is involved in a 50-acre commercial project in Dunnigan and a 700-home residential project is being planned for Dunnigan by Lakemont Development, Inc. <sup>21/</sup> In short, Dunnigan is poised to grow, by percentage terms, much faster than the Yolo County cities of Woodland, Davis and Esparto -- each of which has been allocated at least one FM station by the FCC. <sup>22/</sup> Second, the proposed reallocation will result in the most efficient use of the radio spectrum. Not only will Petitioner realize an opportunity to upgrade its FM service from

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<sup>18/</sup> See Sacramento Area Council of Governments, Regional Data Center, "Projections 1992-2015," excerpts attached as Appendix K (Dunnigan/Knights Landing housing and population "will more than double" by 2015).

<sup>19/</sup> See Letter from Ken Reiff of The Elkins Co., Inc., attached as Appendix L.

<sup>20/</sup> Id.

<sup>21/</sup> See Appendix N.

<sup>22/</sup> See SACG "Projections 1992-2015," supra, attached as Appendix K.

Class A to Class B1 <sup>23/</sup> but available Channel 292A would be a superior FM channel at Willows compared to Petitioner's currently licensed Channel 288A facility. <sup>24/</sup> Third, no other FM channel of any class is available for allotment at Dunnigan as an alternative to Channel 288B1. <sup>25/</sup> Fourth, the reallocation of Petitioner's Channel 288 to Dunnigan would result in the separate and independent upgrade of another FM station in a rural area of northern California. <sup>26/</sup> Any one of these public interest factors would be sufficient to outweigh the conditional interest in retaining a second local service at Willows; and, in any event, a superior FM allocation for Willows is available and will be sought. <sup>27/</sup> Taken together, the public interest in the proposed reallocation is manifest.

### III. THIS IS NOT AN UNLAWFUL "MOVE IN"

15. Four of the Comments contend that, even if Dunnigan is deserving of the proposed new FM allotment, it should be denied because it is an unlawful "move-in" from an underserved rural area to a suburb of an adjacent, overserved urban market. Three

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<sup>23/</sup> River Cities concedes (Comments at ¶ 11) that the FCC long has recognized the public interest benefit from a licensee's maximizing the power of its station.

<sup>24/</sup> See discussion, supra, ¶ 11.

<sup>25/</sup> See Engineering Statement, supra, Appendix H.

<sup>26/</sup> See Comments of Michael Birdsill, dated June 2, 1994.

<sup>27/</sup> See Appendix I.

of the Comments plead that the FCC's decision in the 1991 Sandy Springs case mandates denial of Petitioner's proposal. Once again, these potential competitors -- who desire merely to stifle any new competition -- reach an erroneous conclusion through a series of factually flawed premises. <sup>28/</sup>

16. In its 1990 decision modifying the rules for specifying a new community of license, the FCC noted that it would be hesitant to permit an FM station in an underserved rural area to be moved to a suburb of an adjacent, overserved urban market. See Community Modifications, 5 FCC Rcd 7094, 7096 (1990). This is not such a case.

17. First, Willows is not an underserved rural area. As detailed in PSN's Comments, both the proposed gain and loss areas are "well served" under the Commission's definition because they each receive at least five radio services. In fact, Willows is better served than Dunnigan in that "every person residing within the proposed loss area will continue to receive at least nine aural receptions services and over 76 percent of the population will continue to receive eleven services." <sup>29/</sup> Moreover, another FM channel is not only available to Willows <sup>30/</sup> but

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<sup>28/</sup> Even though Yolo County (and, thus, Dunnigan) may be within the Sacramento ADI (see KZSA Comments at Exhibit B), it is noteworthy that only four (4) opposing comments were filed from among the more than 30 operating stations in the ADI.

<sup>29/</sup> See Comments of Petitioner PSN, filed June 1, 1994, at Exhibit E-9. A reallocation to Dunnigan, in fact, would provide a sixth, seventh or eighth aural service to nearly 700 persons.

<sup>30/</sup> See Appendix H.

(i) it is superior to the current FM facility licensed to Willows <sup>31/</sup>  
and (ii) the current licensee of Willow's KIOS (AM) intends to  
apply for it. <sup>32/</sup>

18. Second, Dunnigan is neither a "suburb" of Sacramento nor is Dunnigan "adjacent" to Sacramento. Dunnigan is in upper Yolo County, nearly 20 miles from Woodland (a non-contiguous suburb of Sacramento) and nearly 40 miles northwest of downtown Sacramento, which lies in a separate county. <sup>33/</sup> Understandably, there is no reference whatsoever to Sacramento in the Executive Summary of the "Town of Dunnigan General Plan." <sup>34/</sup> Rather, Dunnigan is a small town, alongside Interstate Highway 5 in northern California, that appears poised for commercial and residential growth during the next two decades. <sup>35/</sup> Indeed, it appears that Dunnigan will have the highest percentage growth of any town in Yolo County during the next two decades. <sup>36/</sup>

19. Third, Petitioner's proposed reallocation is not an unlawful urban "move-in" but, rather, the only available means whereby its Channel 288A FM facility can be upgraded to Class B1. <sup>37/</sup> Indeed, Petitioner will be able to increase its 60 dBu service

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<sup>31/</sup> Id.

<sup>32/</sup> See Appendix I.

<sup>33/</sup> See Rand McNally map, attached as Appendix E.

<sup>34/</sup> See Petition at Exhibit B, page ES-1.

<sup>35/</sup> See Appendix K.

<sup>36/</sup> Id.

<sup>37/</sup> See Appendix H; see also Petition at Exhibit E.

area by 354% and, in order to compete more effectively, be able to increase its potential audience from 10,542 to 161, 280. <sup>38/</sup> The upgraded Channel 288B1 is also the only FM Channel that can be allocated to serve the community of Dunnigan and, in fact, would not be available unless Petitioner upgrades its Willows Class A facility. <sup>39/</sup>

20. Opponents reliance on the Sandy Springs case, 6 FCC Rcd 6580 (1991) is wholly inapposite. In fact, the dissimilarities between this "upgrade and community-change proposal" and that 1991 case are multitudinous:

-- Unlike this case, that proceeding began as a simple Class A allotment case but was transformed by a counter-proposal into a downgrade of an FM station from Class C to C1 (id., 6 FCC Rcd at 6580 ¶ 2);

-- Unlike this case, that proceeding implicated the FCC's minimum-spacing rules and the FCC concluded that a grant of the proposal "would require a waiver" of those rules and "would create a significant potential for new interference" (id., 6 FCC Rcd at 6581 at ¶ 6);

-- Unlike this case, that proceeding involved charges that the proponent of the change was in violation of the FCC's anti-trafficking policies (id. at ¶ 8);

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<sup>38/</sup> See Petition at Exhibit E, Statement p. 2.

<sup>39/</sup> See Appendix H.

-- Unlike this case, that proceeding involved not merely the downgrading but the movement of an allotment approximately 100 miles and across a state border (id.);

-- Unlike Dunnigan, Sandy Springs was a directly adjacent suburb of Atlanta (Dunnigan is in a different county, nearly 40 miles away from Sacramento);

-- Unlike the hypothetical site and the entire allotment area for Dunnigan in this case, the Sandy Springs proponent proposed to locate its antenna "in the city of Atlanta;" (id., 6 FCC Rcd at 6584 ¶ 24);

-- Unlike Dunnigan's independent standing in this case, Sandy Springs was found by the FCC to be interdependent with the metropolis of Atlanta (id., 6 FCC Rcd at 6585 ¶ 26).

In sum, none of the factors that led the Commission to deny a "first local preference" to Sandy Springs (and to deny that proposal) are present in this case.

21. Moreover, the "public interest" factors in favor of the reallocation to Dunnigan in this case are far greater than those presented in the Sandy Springs case. There, the Commission was concerned about the loss of Class C service to 400,000 persons. Here, the "loss" of Willow's second local service would affect approximately 10,000 persons. <sup>40/</sup> Most importantly, however, there was no alternate allotment for the loss area in the Sandy Springs case, while Channel 292A -- a superior FM channel for

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<sup>40/</sup> But see Appendix J (showing possible 54 dBu service to Willows from fully-spaced Dunnigan site).



Willows -- is available in this case and the owner of Willow's other local station intends to apply for it. <sup>41/</sup> Furthermore, there are additional public interest factors favoring the Dunnigan proposal that were not present in the Sandy Springs case:

-- the Dunnigan proposal is the only way that the licensee can upgrade its Class A facility to Class B1;

-- the proposal is the only way that Dunnigan can receive its first local aural service;

-- the proposal is the only way that first-adjacent FM Channel 287C2 at Shingletown can upgrade its facility to 287C1 at Shingletown; and

-- the proposal will enhance minority ownership by permitting PSN's minority owner to maximize the service-area potential of this licensed FM facility; <sup>42/</sup>

22. In sum, this proposal does not involve the type of urban "move-in" held to be unlawful by the Commission but, rather, would serve numerous public interest objectives.

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<sup>41/</sup> See Appendices H and I.

<sup>42/</sup> The single majority owner of PSN is Jaime Bonilla Valdez, a Hispanic-American who resides in California. See Form 323 for KQSC (FM) [formerly KIQS(FM)], filed May 4, 1994 (official notice requested).

CONCLUSION

The Commission should not be fooled by a few potential competitors. This case is not Sandy Springs, GA. Petitioner's proposal should be adopted because it would provide the growing community of Dunnigan, CA, with its first local service as well as yield numerous other public interest benefits.

Respectfully submitted,



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June 21, 1994

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## Yolo County

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**APPENDIX B**

**Pictures of Dunnigan, Businesses and Government Services**





